

**WARREN ZONING BOARD OF REVIEW**  
**November 18, 2015**  
**Minutes**

The regular meeting of the Warren Zoning Board was called to order at 7:08 pm at the conclusion of the Building code Board of Appeals by Chairman S. Calenda. Also present was Vice Chairman P. Attemann, A. Harrington, M. Smiley, A. Ellis, 1<sup>st</sup> Alternate M. Emmencker and 2<sup>nd</sup> Alternate W. Barrett Holby.

WARREN BUILDING CODE BOARD OF APPEAL was convened at 7:02 pm.

WARREN BUILDING CODE BOARD OF REVIEW was reconvened at 7:08 pm.

Chairman S. Calenda announced this would be the last meeting of M. Smiley whom has resigned from his position on the Zoning Board after more than five years of dedicated service and will be missed.

**Approval of Minutes** - October 21, 2015. A motion was made by A. Harrington to accept the October 21, 2015 minutes as circulated. Second by M. Smiley. Yea – Chairman S. Calenda, Vice Chairman P. Attemann, A. Harrington, M. Smiley and A. Ellis.

**Old Business** - NONE

**New Business**

**Application #15-43, Tattrie John L and Catherine A, owners and applicants and Tattrie, John and Patricia, owners and applicants, 55 & 65 Schoolhouse Rd, Plat Map 21, Lots 245 & 277, request for a *Variance* from sections 32-81 and 32-84 of the Warren Zoning Ordinance to reduce the area of a standard lot of record in an R10 zoning district thereby rendering an adjacent substandard lot of less substandard.**

**Clarification was given that this is in the R40 zone and not in the R10 zoning district, this error is harmless.**

Bruce Cox, Sleprow, Sleprow & Associates, E. Providence, gave representation for Application #15-43. Mr. Cox explained this began as an Administrative Subdivision of adjacent lots which are owned by family members. Lot 245 currently exists of 98,000 sq ft of which 16,000 is proposed to be transferred to Lot 277. (The 16,000 sq. ft. would be located directly behind Lot 277.) Lot 277 would then become 31,000 sq ft as opposed to its approximate 14,500 sq ft size making it less non-conforming and Lot 245 would then have 80,000 plus sq ft which is twice the dimension required. This application was referred to the Board by the Administrative Officer for reasons he was not sure.

**PUBLIC COMMENT** - None

M. Smiley requested it be made part of the record that it was completely un-necessary, a waste of effort, time and money for the applicant to appear before the Zoning Board on this matter.

**It was moved by A. Harrington to approve Application #15-43, Tattrie John L and Catherine A, owners and applicants and Tattrie, John and Patricia, owners and applicants, 55 & 65 Schoolhouse Rd, Plat Map 21, Lots 245 & 277, request for a *Variance* from sections 32-81 and 32-84 of the Warren Zoning Ordinance to reduce the area of a standard lot of record in an R10 zoning district thereby rendering an adjacent substandard lot of less substandard. The result will substantially expand Lot 277 and while it will diminish the non-conforming lot size,**

the lot will remain non-conforming. Further, Lot 245 will not become a non-conforming by the decrease in size and the applicant has given evidence and testimony to substantiate the need for the granting this application. Second by Vice Chairman P. Attemann. Yea – Chairman S. Calenda, Vice Chairman P. Attemann, A. Harrington, M. Smiley and A. Ellis.

### **Remanded Business**

**The following Applications #12-26 and #12-27 were remanded,” for insufficient findings of fact and conclusions of law” by Superior Court. The Court remanded “for further findings of fact and conclusions of law, as well as to address the question of merger with respect to the nine lots included in the Applicants’ applications.”**

**These applications were originally heard before this Board in 2012. Some of the Board members no longer reside therefore testimony would need to be given as if they are new applications.**

**Application #12-26 (Remanded),** Blount Realty Company and Water Street Dock Co., Inc., owners and Blount Boats, Inc. and Blount Small Ship Adventures, Inc., applicants, 461-489 Water Street and 1 Shipyard Lane, Plat Map 6, Lots 107, 99 (f/k/a 99+3), 114, 98, 11, 25, 109, 110, 111, 108 and 93, request for a Special Use Permit from sections 32-54 and 32-57 of the Warren Zoning Ordinance to add a 7,150 sq. ft. tent to the existing special uses of shipyard (“Boat manufacture, ship manufacture” Sec. 32-57) and marine terminal (“Ship dock or marina” Sec. 32-54) in a Waterfront zoning district.

A letter (Exhibit 4) dated 11/16/2015 addressed to Chairman S. Calenda from the Rhode Island Executive Office of Commerce in support of these applications was entered into the record.

Robert J. Healey, Esq., 665 Metacom Ave., Warren, represented abutter Jane McDougall, Water St., requested to know how the Board would be proceeding now that the Superior Court remanded the applications for new and further findings. Mr. Healey questioned if these would be considered and heard as old or new hearings.

Solicitor Skwirz confirmed Applications #12-26 and #12-27 are not new, have been heard before the Waterfront Historic and were remanded,” for insufficient findings of fact and conclusions of law” by Superior Court. The Court remanded “for further findings of fact and conclusions of law, as well as to address the question of merger with respect to the nine lots included in the Applicants’ applications.” Solicitor Skwirz also stated that it would be appropriate to hear the Special Use prior to the Dimensional Variance.

Chairman S. Calenda confirmed that the testimony given would be considered for both Applications #12-26 & #12-27 and would waive the reading of Application #12-27 if there was no objection. There was no objection.

Andrew M. Teitz, Esq., AICP, 2 Williams St, Providence, represent Blount Realty Company and Water Street Dock Co., Inc., owners and Blount Boats, Inc. and Blount Small Ship Adventures, Inc., seeking a Special Use Permit for the expansion of the substantial structure, the tent at full extension is over 7,000 sq. ft. He also explained the Dimensional is due to the height, the highest section being 44 feet in height where the permitted height is 30 feet and the rear yard setback as the rear yard setback could be considered 0 feet when the tent is extended where 20 feet is required.

Submitted to and for the Boards’ review Exhibits 1-12 as listed

- |           |   |
|-----------|---|
| Exhibit 1 | Sec 32-54 (page 22), Sec 32-57 (page 24) and 32-78 (page 38) Zoning Ordinance |
| Exhibit 2 | Turning Point Survey Co. survey dated 5/12/2009                               |
| Exhibit 3 | Historical Preservation & Heritage commission letter dated 4/1/2013 to CRMC   |

Exhibit 4	Executive Office of Commerce letter dated 11/16/2015 to Zoning Board Chairman S. Calenda
Exhibit 5	URI Costal Resources Center Municipal Inventory Report
Exhibit 6	US Environmental Protection vs. Blount Boat Inc., Docket # 01-2013-0015
Exhibit 7	Childs Engineering Corp, Proposed Yardways Upgrade dated 8/26/2013
Exhibit 8	Qualifications of Nathan Kelly, AICP, NCI
Exhibit 9	Horsley Witten Group memo dated 11/18/2015 addressed to Andrew M. Teitz, Esq.
Exhibit 10	Qualifications of J. Nathan Godfrey
Exhibit 10A	General Appraiser Certification of J. Nathan Godfrey
Exhibit 11	Newport Appraisal Group LLC, consulting report dated 11/18/2015 to Andrew Teitz, Esq.

### Witnesses

David Greenhalgh, PLS, President of Turning Point Survey, 100 Broad Common Rd, Bristol, RI, with 25 years experience testified that he had researched the land evidence records in the Town Clerk's Office for boundaries as well as the site. He also stated that there were basically no differences between the surveys done in 2009 and 2015. (Testimony included discussion with regard to Exhibit 2)

Marsha Blount, President of Blount Boats, Water St, explained that the Blount family has been on the waterfront for over 115 years in the same location where in 1942 her father Luther began to build boats. She also explained that Blount shipyard builds steel and aluminum vessels up to 220 feet in length. They are also known for boats that last for decades which range from cruise to tug boats. Ms. Blount further explained that a 25 aluminum boat building contract had been to her company and the need for the tent is due to if aluminum is not protected from the weather it will pit. Ms. Blount stated that they do perform emergency take down of the tent which takes approximately 8 hours. She also explained that it would be a dreadful hardship if these applications were not approved and they were not able to install the tent. (Testimony included discussion with regard to Exhibits 3, 4, 5 and 6)

Richard Fitzgerald, registered professional engineer in RI, MA, CT and MD with a degree in structural engineering who has been with Childs Engineering Corp, Bellingham, MA for 33 years and is a project manager specializing in waterfront structure engineering (the Board accepted Mr. Fitzgerald as an expert in the field of engineering). Has designed and inspected the vertical ship lift systems at Blount Boats and Shipways which is covered by the tent structure. Mr. Fitzgerald stated that the tent materials (PVC laminated fire proof material) are completely within code and standards requirements for hurricanes and this tent is designed to withstand 125 mile winds. (Testimony included discussion with regard to Exhibit 7)

Nathan Kelly, AICP, NCI, 52 Bellaire, Providence, RI, Principle Planner with Horsley Witten Group, 55 Dorrance St, Providence, RI expert in comprehensive planning, zoning reform, neighborhood planning, streetscape plans. As of December he will be the president of Rhode Island Chapter of the National Planning Association. (The Board accepted Mr. Kelly as an expert with the scope focusing on planning) Mr. Kelly stated that he has reviewed the Town's Comprehensive Plan, A Waterfront Development Plan for Warren, RI(developed by the Urban Design Group), as well as plans from the State. Mr. Kelly pointed out Policy 7 of Warren's Comprehensive Plan. Mr. Kelly stated in his opinion with regard to the Special Use Permit it would be compatible with the neighboring land uses and would be compatible with the Comprehensive Plan and the State Plans. (Testimony included discussion with regard to Exhibits 8 and 9)

J. Nathan Godfrey, 221 Third St, Newport, RI, appraiser and property consultant with Newport Appraisal Group (The Board accepted Mr. Godfrey as an expert). Mr. Godfrey stated that he had performed a site inspection. He further explained his knowledge of waterfront property and his experience serving two terms on the Planning Board in Narragansett. Mr. Godfrey stated that the Special Use Permit meets the all steps necessary for

approval – it would be compatible with the neighboring land uses, the use already exists so it would not be creating a nuisance, the public convenience and welfare would be served by employee over 100 people and would be compatible with the comprehensive plan. Mr. Godfrey also stated in his expert opinion the granting of the Variance is not for financial gain, the hardship was not the result of prior actions of the applicant, will not alter the surrounding area and this would be the least relieve necessary. (Testimony included discussion with regard to Exhibits 10, 10A and 11)

## **PUBLIC COMMENT**

Robert J. Healey, Esq., 665 Metacom Ave, Warren stated the question is, “Do all of these lots get combined?” He pointed out that under the new application it makes some of the relief not necessary. He also stated this is not a complex and merger by use and there are specific lots here that need to be addressed, with different uses, owned by different corporations, for different purposes. Mr. Healey explained for the record that these applications are requesting something all together different than the actual remanded applications.

Jane McDougall, 500 Water St., an abutter, expressed the differences between this application and the remanded application. She further explained that the plan that was submitted to CRMC was not the same plan that was approved and came before the Zoning Board. Ms. McDougall also brought to the Boards’ attention original testimony (via transcript) of the applicant’s expert witness Mr. Fitzgerald. Ms. McDougall pointed out the Judge’s decision that there are nine (9) lots and that the merger of these nine (9) lots needed to be addressed and that the residential lots have always be residential lot that should remain that way and they have very different uses.

Testimony included discussion with regard to these Exhibits:

Exhibit 12	Big Top Tent Samples – PUBLIC COMMENT
Exhibit 13	Photos – PUBLIC COMMENT
Exhibit 14	Photos – PUBLIC COMMENT

**It was moved by A. Ellis to approve Application #12-26** (Remanded), Blount Realty Company and Water Street Dock Co., Inc., owners and Blount Boats, Inc. and Blount Small Ship Adventures, Inc., applicants, 461-489 Water Street and 1 Shipyard Lane, Plat Map 6, Lots 107, 99 (f/k/a 99+3), 114, 98, 11, 25, 109,110, 111, 108 and 93, request for a Special Use Permit from sections 32-54 and 32-57 of the Warren Zoning Ordinance to add a 7,150 sq. ft. tent to the existing special uses of shipyard (“Boat manufacture, ship manufacture” Sec. 32-57) and marine terminal (“Ship dock or marina” Sec. 32-54) in a Waterfront zoning district. In granting this Special Use Permit findings of fact are based on the testimony heard this evening including testimony from individuals excepted by Board as experts in their respective fields, in granting this application we also relied upon the information gathered to determined that the lots in question here are part of one entity following the idea and law of lots merged by use. The testimony has supported that while different corporations may own lots, the actual individuals owning them are the same individuals and these lots function and support the same or overall ship related industry. Further finding of fact, with regard to whether this is a non-conforming use or special use relying on 32-130 definition section of the Ordinance, we find that the term non-conforming use would not applicable here or this would clearly fall under the issue of a Special Use. The special use will be compatible with the neighboring land use based on the testimony that has been heard this evening. Finding of fact, that this use, continues to support an existing variety of uses that occurs throughout Warren’s waterfront including other maritime mixed use facilities alongside residential business fronts and municipality this on the waterfront and consistent throughout the entire waterfront in town and for a very long period of time, many decades, this relationship has existed. The use will not create a nuisance or hazard in the neighborhood, testimony was heard that the tent structure has been reviewed and approved by CRMC with regard to construction in a flood prone area. There was also testimony that the structure is compliant with flood preparation, hurricane standards, it

meets the building code and also addresses the EPA concern, and in fact it reduces potential hazards. The Special Use will be compatible with the Community Comprehensive Plan. The Comprehensive Plan of Warren supports the ship and the maritime industry, supports and active working waterfront and this is one of the more prominent features of the Comprehensive Plan so this proposed structure dovetails with the goals in that plan. The public welfare and convenience will be served as a result of granting this applicant specifically the job creation and economic vitality of Warren's working waterfront underscored by a letter that was entered into evidence from the Secretary of Commerce of the State of Rhode Island who cited the fact that ship building in Warren provides a clear advantage for the State overall and not only the Town. Therefore clearly the welfare of the whole State is served by the granting of this application. Further, finding of fact, the one particularly larger residential lot is used as an intraocular part for housing of subcontractor and crew members that are involved in the cruise or boat building activity. Second by Vice Chair P. Attemann. Yea – Chairman S. Calenda, Vice Chairman P. Attemann, A. Harrington, M. Smiley and A. Ellis. 5-0

**A motion was made by Vice Chairman P. Attemann to extent the meeting past 11:00 pm.** Second by M. Smiley. Yea – Chairman S. Calenda, Vice Chairman P. Attemann, A. Harrington, M. Smiley and A. Ellis. 5-0

**Application #12-27 (Remanded); Blount Realty Company and Water Street Dock Co., Inc., owners and Blount Boats, Inc. and Blount Small Ship Adventures, Inc., applicants; 461-489 Water Street and 1 Shipyard Lane, Plat Map 6, Lots 107, 99 (f/k/a 99+3), 114, 98, 11, 25, 109,110, 111, 108 and 93, request for a Dimensional Variance from section 32-78 of the Warren Zoning Ordinance to add a 7,150 sq. ft. tent to the existing special uses of shipyard and marine terminal, which tent will be 44' high and 35' is allowed, and the rear yard may be 0' and 20' is allowed, in a Waterfront zoning district.**

**It was moved by A. Ellis to approve Application #12-27 (Remanded);** Blount Realty Company and Water Street Dock Co., Inc., owners and Blount Boats, Inc. and Blount Small Ship Adventures, Inc., applicants; 461-489 Water Street and 1 Shipyard Lane, Plat Map 6, Lots 107, 99 (f/k/a 99+3), 114, 98, 11, 25, 109,110, 111, 108 and 93, request for a Dimensional Variance from section 32-78 of the Warren Zoning Ordinance to add a 7,150 sq. ft. tent to the existing special uses of shipyard and marine terminal, which tent will be 44' high and 35' is allowed, and the rear yard may be 0' and 20' is allowed, in a Waterfront zoning district. In granting this Dimensional Variance findings of fact are based on the testimony heard including testimony heard from experts accepted by the Board specific testimony with regard to certain technical aspects of this tent structure, one feature find through the testimony is that the tent structure is while having the capabilities of extent all of the way to the rear of the property at the water's edge is not permanently anchored at that point and is in fact a mobile structure so at time the tent will not in fact be right up to the water's edge but is somewhat transient in its nature with regard to the setback at the edge of the property. The hardship is due to the unique characteristics of the land and not due to the general characteristics of the surrounding area or the physical or economical disability of the applicant. Based on testimony heard finding of fact, is in fact unique in that it directly abuts the waterfront, the activities taken place here are unique in that a shipyard or ship related facility by the very definition would need to be abutting the water otherwise the activities would be precluded from occurring here. So by having direct water access is a unique requirement of this piece of land and this particular structure is unique in that it must accommodate construction activities of vessels that are both in and out of the water and it must provide the flexibility in order to allow that activity to occur. The hardship is not the result of any prior action and does not result for the primarily of the applicant for and greater financial gain. The findings are based on the testimony heard that this configuration of the land was pre-existing, this land has always abutted the water, the hardship s not the result of prior actions because the edge of the water in relationship to where slipway is, is not something that the applicant created as the water edge has been there for all of history and it is necessitated that is tent structure directly abuts the water otherwise it would be impossible to conduct the activities that are apparent in ship building. It is not the primarily the result of desire for increased financial

gain, testimony was given that these kinds of facilities are a necessary component of the business environment common within the industry due to the nature of the materials that the ships are built from given that they have to be protected from the elements while constructed and have direct access to the water it's merely a function of the ship building industry that the applicant is engaged in. The granting of this variance will not alter the general character of the surrounding area or impair the intent or purpose or the ordinance, the erecting of the structure of the tent remains in character with the working waterfront of Warren which extends up and down the whole length of the Town's waterfront access other shipyard activities are very common this is part of a larger shipyard complex so it is very much in character with the neighborhood and it is not going to create a deviation front the type of activities that are currently happening there. It certainly will not contravene the Ordinance or Comprehensive Plan specifically the Comprehensive Plan as discussed before it supports ship building activities as one of its core values of the working waterfront. The relief being sort is the least relief necessary the dimensional variance given the requested zero foot setbacks at the water's edge is absolutely necessary because ships constructed on a slipway must be direct access to the water. Testimony given was that while a ship is being constructed it has to be covered to protect the materials and therefore it makes good sense that a structure needs to provide access from the water to where the ships being constructed so the zero foot setback at time when the mobile structure is fully extended would be compatible here and is the least amount needed in order to achieve that goal. The height that has been requested based on the testimony of the applicant is the least height necessary to accommodate the construction of the type of vessels that are occurring at this facility and the tent structure has been designed to specifications to fit the minimum requirements necessary for them to conduct their business. The hardship that the applicant is seeking relief from if it were not to be granted this would a level of hardship that rises to more than a mere inconvenience. The testimony heard based on the ship building activities necessitated here if the application were not to be granted it would preclude the building of these types of vessels at this facility because we have heard that materials for this type of building must be protected from the weather while under construction. If the application were not to be granted it would seriously jeopardize the business activity based off this applicant. Further finding of fact, the requested height variance is the same height as the immediately adjacent building so that it is compatible with the height that is there. The height is closer to the water and further away from the street and there is a buffer of a building and the larger, higher portion of the tent structure then the street itself. The granting shall be conditional that fencing shall be installing and be in compliance with the Ordinance which speaks directly to fencing in this type of waterfront district. Second by Vice Chairman P. Attmann. Yea – Chairman S. Calenda, Vice Chairman P. Attemann, A. Harrington, M. Smiley and A. Ellis. 5-0

### **Administrative Matters**

Update regarding zoning appeal decision – Quattrocchi vs. Zoning Board of the Town of Warren, C.A. No. PC-14-5924

Solicitor Skwirz stated that the decision was enclosed in the Boards' packets. Although this was a complicated matter the court upheld the Board's decision.

### **Adjourn**

It was moved by A. Harrington to adjourn the meeting at 11:18 pm. Second by M. Smiley. . Yea – Chairman S. Calenda, Vice Chairman P. Attemann, A. Harrington, M. Smiley and A. Ellis. 5-0

Respectfully submitted,

Rhonda Lee Fortin